IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21-8-2006

Coram

The Honourable Mr.Justice N.PAUL VASANTHAKUMAR

W.P.No.8380 of 1998

The Management of Madura Cement Pvt Ltd,
E.9 - SIPCOT Complex,
Manamadurai ... Petitioner

Vs.

1. The Presiding Officer,
   Principal Labour Court, Madurai.
2. S.Viswalingam
3. J.Jayakumar
4. K.Chandran
5. V.Diravidaselvan
6. P.Nagalingam
7. G.Selvaraj
8. K.Murugan
9. M.Sirajudeen
10. V.C.Subramanian
11. P.Cholaimuthu
12. V.Krishnamurthy
13. P.Poovalingam
14. S.Arul
15. S.Guruswami
16. M.Soundararajan
17. A.Alexander ... Respondents

Writ petition filed under Article 226 of Constitution of India praying this Court to issue a writ of Certiorari calling for the records from the file of the first respondent in I.D.Nos.409, 412. 415, 417, 418, 419, 420, 421, 422, 423, 425, 426, 427, 438 and 439 of 1990 and quash the common award dated 31st December 1996 and published in Part II, Section 2 of Gazette (Labour and Employment Department) dated 2nd July, 1997 and issue further directions.

For Petitioner : Mr.S.Jayaraman
1st Respondent : Court
For Respondents 2to17: Mr.K.Elango

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O R D E R

Petitioner seeks to quash the common award of the first respondent made in I.D.Nos.409, 412, 415, 417, 418, 419, 420, 421, 422, 423, 425, 426, 427, 438 and 439 of 1990 dated 31.12.1996.

2. Brief facts necessary for disposal of the writ petition are as follows.

(i) Petitioner is running a Mini Cement Plant at Manamadurai since October, 1977, and having more than 50 workers on its roll. Petitioner has been declared as a Sick Industrial Undertaking under the Sick Industrial Undertaking (Special Provisions) Act, 1985 and proceedings are pending before the BIFR in case No.106 of 1997. The Industrial Development Bank of India has been appointed as Operating Agency by the BIFR in its proceedings dated 10.10.1997 and directed the Operating Agency to come forward with rehabilitation proposals. There are five units in the Petitioner Company and members of one of its Unit viz., CITU are concerned workmen in the above industrial disputes.

(ii) According to the petitioner, the factory is situated in SIPCOT complex and is not a public place. There is a lease agreement between the petitioner Management and the SIPCOT, entered into lease agreement and as per the terms of the said agreement the cost of roads, drainage, street, lighting, etc., shall be borne by the petitioner along with the other companies. Thus, all the roads inside the complex are under the joint control and use of the occupants of the Complex, which clearly shows that the petitioner Management has also got right and interest over the roads inside the complex.

(iii) On 14.5.1989 the workmen concerned herein in concert with the other employees assaulted a company worker belonging to the petitioner, who was on his way from the Company. When the victim ran towards the canteen, which was also on lease with the petitioner Company, the concerned Workman chased him and pelted stones and assaulted him. Some of the glass panes of the doors and windows of the canteen were broken. The assaulted victim gave complaint to the Police and took medical treatment for the injuries sustained by him. A complaint dated 14.5.1989 was received from one Petchimuthu Pandian narrating the facts.

(iv) Petitioner Management issued charge memo dated 22.5.1989 to all the workers individually narrating the entire incident and also charged them for the misconducts committed by them and the workmen submitted their explanation on 29.5.1989. Since the explanations were not found satisfactory, the management conducted

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domestic enquiry and some of the workmen were allowed the assistance of co-worker. Some of the workmen refused to participate in the domestic enquiry and exparte enquiry was conducted against them. The workmen concerned in I.D.No.412 of 1990 - Chandran, I.D.No.413 of 1990 – Mr.Dravida Selvan and I.D.No.418 of 1990 – Selvaraj were set exparte in the domestic enquiry since they failed to appear.

(v) The Enquiry Officer submitted his report and gave a finding that the charges are proved. The seriousness and misconduct of the workmen were considered and after serving a show cause notice and receiving explanation, punishment of dismissal was imposed against the workmen. The dismissal order was passed on 16.1.1990 for the proved misconduct. Aggrieved by the above said orders of dismissal the workmen raised industrial disputes under section 2A of the Industrial Disputes Act, 1947, which were taken on file as I.D.Nos.409, 412. 415, 417, 418, 419, 420, 421, 422, 423, 425, 426, 427, 438 and 439 of 1990. Since the issue was common, the disputes were commonly tried and common award was passed.

(vi) The workmen contended that the charge framed against them do not fall within the purview of Clause 16(j) of the Model Standing Order and therefore the proceedings initiated and the dismissal order are illegal and unlawful and prayed for reinstatement with backwages. The Management resisted the said claim contending that the workmen assaulted the workmen belonging to the Union while they were coming from the factory and that they also pelted stones at them and also broke the Glass panes in the windows and doors of the canteen and their conduct is clearly in violation of section 16(j) of the Standing Orders. The Labour Court found that the alleged misconduct will not come under the relevant clause of the Standing order and directed to reinstate the workmen with 50% backwages and continuity of service. The said common award is challenged in this writ petition.

3. The learned counsel for the petitioner/Management argued that since the occurrence had happened within the vicinity of the Petitioner Company and it is a common area, violation of Model Standing Order is attracted and therefore the Labour Court is not justified in holding that the alleged incident occurred at a long distance from the petitioner Company and there is no violation of standing order of the Petitioner Company, and that the said finding is contrary to the decisions of the Honourable Supreme Court as the occurrence had happened in the vicinity of the Petitioner Company. Therefore according to the learned counsel, the order of the Tribunal is liable to be set aside. The learned counsel also cited the decisions reported in 1975 (2) LLJ 379 (Cooper Engineering Ltd v. P.P.Mundhe); 1975 (1) LLJ 391 (Munchandani Electrical and Radio

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Industries Ltd., v. Their Workmen) and 1984 (1) LLN 934 (Glaxo Lab (I) Ltd. v. Labour Court, Meerut & Others) in support of his contentions.

4. The learned counsel for the Workmen contended that Clause 16(j) of the Model Standing Order is very clear which says,

> "Drunkenness, Ritiousness and disorderly behaviour during working hours, in the premises of the Industrial Establishment or any act subversive of discipline".

and even according to the charge, the alleged incident had not taken place not within the premises of the establishment and therefore even if the Labour Court is justified in setting aside the dismissal order and ordering reinstatement with 50% backwages and continuity of service. In support of his contention, the learned counsel relied on the decisions reported in 1984 (1) LLN 934 (Glaxo Lab (I) Ltd. v. Labour Court, Meerut & Others) and 2001 (1) LLN 1547 (Jeeva Transport Corporation Ltd., v. Labour Court, Salem and another).

5. I have considered the rival submissions made by the learned counsel appearing for the petitioner/Management as well as respondents/Workmen. To attract clause 16(j) of the Model Standing order, which is extracted above, there should be disorderly behaviour or drunkenness during the working hours.

6.(a) The Honourable Supreme Court in the decision reported in 1984 (1) LLN 934 (Glaxo Lab (I) Ltd. v. Labour Court, Meerut & Others)in para 11 held thus,

> "... Therefore, keeping in view the larger objective sought to be achieved by prescribing conditions of employment in certified standing orders, the only construction one can put on cl.10 is that the various acts of misconduct therein set out would be misconduct for the purpose of S.O.22 punishable under S.O.23, if committed within the premises of the establishment or in the vicinity thereof. What constitutes establishment or its vicinity would depend upon the facts and circumstances of each case."

Again in para 20, the Honourable Supreme Court held as follows,

> "It is therefore, obligatory upon the employer to draw up with precision those acts of omission and commission which in his industrial

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establishment would constitute misconduct. Penalty is imposed for misconduct. The workmen must therefore, know in advance which act or omission would constitute misconduct as to be visited with penalty. The statutory obligation is to prescribe with precision in the standing order all those acts of omission or commission which would constitute misconduct. In the face of the statutory provision it would be difficult to entertain the submission that some other act or omission which may be misconduct though not provided for in the standing order would be punishable under standing order 23. Upon a harmonious construction, the expression 'misconduct' in S.O.23 must refer to those acts of omission or commission which constitute misconduct as enumerated in standing order 22 and none else. ... "

(b) The said position is followed in the decision of this Court reported in 2001 (1) LLN 1547 (Jeeva Transport Corporation Ltd. v. Labour Court, Salem and another), wherein in paragraphs 6 and 7 it is held thus,

"6. In such circumstances the question remained as to whether the punishment imposed by the petitioner can be held to be validly made. In this context, a Division Bench judgment of our High Court J. Dhanaraj v. Tamil Nadu Electricity Board and others reported in 1995-I-LLJ-931 (Mad-DB) can be usefully referred to wherein the judgment of the Hon'ble Supreme Court reported in 1984(1) LLN was relied upon. The relevant passage of the judgment of the Hon'ble Supreme Court referred to read as under at p.934 of LLJ:

"5 ..... In short, it cannot be left to the vagaries of management to say ex post facto that some acts of omission or commission nowhere found to be enumerated in the relevant Standing Order is nonetheless a misconduct not strictly falling within the enumerated misconduct in the relevant Standing Order but yet a misconduct for the purpose of imposing a penalty. Accordingly, the contention of Sri Shanti Bhushan that some other act of misconduct which would per se be an act of misconduct though not enumerated in Standing Order 22 can be punished under

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Standing Order 23 must be rejected."

7. Applying the above stated principles, the Division Bench was pleased to quash the very charge-memo issued to the petitioner in that case. In the case on hand, the charge levelled against the second respondent was under Clause 15(c) of the Model Standing Orders. A reading of the said clause discloses that the same would not fit into the allegations levelled against the second respondent. Even assuming that the conduct of the second respondent could be brought within the fold of Clause 15(x), having regard to the Criminal Court verdict under Exhibit W-3, there is no scope for sustaining the action of the petitioner against the second respondent herein. As the very basis for initiation of the disciplinary action against the second respondent has o nexus to stand, there is no scope for interfering with the award impugned in this writ petition. ... "

7. In view of the above cited decisions of the Honourable Supreme Court as well as this Court, the workmen in this case cannot be proceeded for the alleged violation of Clause 16(j) of the Standing Order, which is very specific that the delinquency should be during the working hours, in the premises of the Industrial Establishment. Therefore the finding given by the Labour Court that the workmen herein cannot be proceeded for the alleged violation of the Standing Order and the ultimate decision of setting aside the punishment of dismissal and reinstatement with 50% backwages and continuity of service, cannot at all be interfered with. I hold that there is no perversity in the said decision and the same is in consonance with the decision of the Honourable Supreme Court and that of this Court, referred above.

8. In the result, the common award dated 31.12.1996 passed by the Labour Court/first respondent herein is hereby confirmed and the writ petition is dismissed. No costs.

vr

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

The Presiding Officer,
Principal Labour Court, Madurai.

+ 1 cc to Mr. S. Jayaraman, Advocate SR No. 37326

+ 1 cc to Mr. K. Elango, Advocate SR No. 37616

NG(CO)
SR/5.9.2006

Order in

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